

JAN 19 2005 4:31PM HP LASERJET 3200

P. 2

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS****IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION**MDL NO. 1456
Civil Action No. 01-12257-PBS**THIS DOCUMENT RELATES TO
01-CV-12257-PBS AND 01-CV-339**

Hon. Patti B. Saris

Declaration of Rock P. Magnotta

Rock P. Magnotta declares as follows:

1. I am the Director of Trade Relations for McNeil Consumer & Specialty Pharmaceuticals ("McNeil Consumer"). McNeil Consumer is responsible for the marketing and sale of Flexeril®, a medication used to treat lower back pain. Flexeril® is the only McNeil Consumer product at issue in the this proceeding.
2. I understand that on December 7, 2004, during the cross examination of defendants' tutorial expert, Gregory K. Bell, Ph.D., plaintiffs' counsel asked Dr. Bell if he was aware that McNeil Consumer had simultaneously raised Flexeril's AWP and lowered its WAC price. I also understand that Dr. Bell responded by saying that he was not aware that McNeil Consumer had done so.
3. I am familiar with the history of the relationship between Flexeril's AWP and WAC price. McNeil Consumer never raised Flexeril's AWP while simultaneously lowering its WAC price. In fact, as I testified at my deposition in August 2004, throughout the time that

JAN 19 2005 4:31PM HP LASERJET 3200

P. 3

Flexeril has been marketed and sold by McNeil Consumer, its AWP has always been 120% of its WAC price.¹

4. The question that plaintiffs' counsel posed to Dr. Bell during the tutorial was unfounded, so I am not surprised that Dr. Bell had never heard of such a thing.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 19, 2005


Rock P. Magnotta

¹ In 2002, despite the fact that McNeil Consumer continued to suggest that Flexeril's AWP should be 120% of WAC, one the price reporters, First Data Bank, unilaterally increased Flexeril's AWP to 125% of WAC. Other price reporting services, such as Redbook, did not change the percentage difference between Flexeril's AWP and WAC price.